

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 2989 of 2011

- Arun Kumar Pathak S/o Shri Jwala Prasad Pathak, aged about 59 years, Male Multipurpose Health Worker, Pandripani Primary Health Centre, Nangoor Distt. Bastar Cg

---- Petitioner

Versus

1. State Of Chhattisgarh through Secretary, Medical and Health Services Mantralaya Raipur (C.G.)
2. The Joint Director Health Services, Raipur Cg
3. The Chief Medical And Health Officer, Jagdalpur Distt. Bastar, Cg
4. The District Family Welfare and Health Officer, Kanker Cg
5. The Block Health Officer, Primary Health Centre Kondagaon, Cg

---- Respondent

For Petitioner
For Respondent/State

Shri Keshav Dewangan, Advocate
Shri Shashank Thakur, GA

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

16/02/2016

1. The petitioner was appointed as Surveillance Worker on Adhoc basis on 10.01.1984 under an order passed by the Divisional Joint Director, Health Services, Bastar Division. He suddenly fell ill on 07.07.1987, therefore, he moved an application for grant of casual leave of 4 days i.e. from 07.07.1987 to 10.07.1987. The petitioner did not report back on duty after the period of casual leave was over and thus he overstayed the leave. The petitioner subsequently appeared before the Controlling Officer on 20.04.1988 along with a fitness certificate, however, he was not allowed

to join duties.

2. It is the stand of the petitioner that he kept on representing the matter before the appropriate authorities but was not allowed to join duties without there being any adverse order terminating his services or otherwise. Eventually, the matter was taken up by the Directorate of Health Services, who passed an order on 29.06.1999 addressed to the Chief Medical and Health Officer, Jagdalpur to allow the petitioner to join duties on certain conditions. It was also stated in the order that a departmental enquiry be constituted against the petitioner for the period of unauthorized absence.
3. Referring to the law laid down by this Court in **Smt. Mrudula Rishi v. State of Chhattisgarh and Others**¹, learned counsel for the petitioner would submit that the impugned order would amount to major penalty imposable under Rule 10 of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966, therefore, in the absence of any departmental enquiry being held against the petitioner, the order does not satisfy the requirement of law. He would submit that the order is otherwise violative of principles of natural justice.
4. Per contra, learned State counsel would oppose the petition on submission that the petitioner remained absent from duties since after 07.07.1987, however, he did not initiate any legal action though subsequently he was allowed to join the services in the month of June/July, 1999. He would submit that this writ petition filed in the year 2011 is delayed by 12 years, therefore, it deserves to be dismissed.

¹ 2014 (1) MPHT 51

5. Material available would reveal that the petitioner initially obtained casual leave for 4 days till 10.07.1987, however, he did not return back to join the duties. He produced a medical certificate dated 20.04.1988 to join the duties, however, the matter remained pending for about 10 years when the Director, Directorate of Health permitted him to join on 29.06.1999. Thus, during this period, the petitioner kept quiet for about 11 years. After his joining in the month of June, 1999, the petitioner again kept quiet, even though the impugned order was passed on 06.08.1999 treating his unauthorized absence as break in service. It is not the stand of the petitioner that he was not aware of this order or that he made any representation or appeal against the impugned order. Thus, the petition filed in June, 2011 to challenge the order passed in August, 1999 suffers from delay of about 12 years.
6. The Supreme Court in the matter of **Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu**² has held thus:-

“15. In *State of M.P. v. Nandlal Jaiswal* the Court observed that: (SCC p. 594, para 24)

“24. ... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.”

It has been further stated therein that: (*Nandlal Jaiswal case*, SCC p. 594, para 24)

“24. ... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public

inconvenience and bring in injustice.

- 16.** Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”
7. The petitioner has not offered any satisfactory explanation as to why he kept quiet for 12 years. The explanation offered in para 7 of the writ petition that the cause of action is recurring is not acceptable. An order treating the period of unauthorized absence as break in service is not recurring, because the effect thereof reflects at the time of retirement.
8. For the foregoing, the writ petition is dismissed on the ground of delay and laches.

Sd/-
JUDGE
PRASHANT KUMAR MISHRA

Nirala